IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6562 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GN LAKUM & 6 - Petitioner(s)

Versus

GOVERNMENT OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR ANAND L SHARMA for Petitioner(s) : 1 - 7.
MR LB DABHI, AGP for Respondent(s) : 1 - 3.
MR PARESH UPADHYAY for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/01/2006

ORAL JUDGMENT

1. The petitioners, in all seven, who were Junior Technical Assistants in the office of

the Director of Insurance, have filed this petition under Article-226 of the Constitution of India praying for the direction to the respondent to consider the petitioners as being eligible for promotion to the post of Senior Technical Assistants on their passing the Departmental Examination prescribed by the Government subject to fulfillment of requirement of experience as per the rules. The petitioners have also prayed for the direction to the respondents to confer the petitioners all benefits such as promotion, seniority, pay fixation etc, from the respective date they have passed the Departmental Examination prescribed by the Government. The petitioners have also prayed for the direction to the respondents to confer the petitioners the benefit of higher pay scale on completion of 9-18-27 years service from the date they became eligible for the same on their

passing the Departmental Examination with all consequential benefits.

2. Mr.Anand Sharma, learned advocate appearing for the petitioners has not pressed the relief in para 14(B) and (C) of the petition. The petition was admitted and rule was issued on 17.3.1998. Though the interim relief was refused, the Court has observed that promotion to the post of Senior Technical Assistants that may be given, shall be subject to the result of the petition.

3. It is the case of the petitioners that the petitioners have passed the Departmental Examination prescribed by the Government. It is also their case that the promotion from the post of Junior Technical Assistant is available to the post of Senior Technical Assistant. The promotion is governed by the statutory rules

framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution called “The Senior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977. Rule-2 of the said Rules, which pertains to appointment to the post of Senior Technical Assistant, reads as under :-

> “2. Appointment to the post of Senior Technical Assistant in Class-III service in the Directorate of Insurance shall be made either -
> (a) by promotion of a person of proved merit and efficiency from amongst Junior Technical Assistant who have put in at least three years of service in Directorate of Insurance on the post of Junior Technical Assistant and who have passed the appropriate professional and departmental examination, if any, as may be prescribed by Government, or
> (b) by direct selection.”

4. It is further stated that the promotion and direct selection is to be made in the ratio of 2:1. It is further stated that the Rule-6 of the said Rules reads as under :-

> “6. The selected candidate shall be required to pass the professional or the departmental examination, if

any and an examination in Gujarati or Hindi or both in accordance with the rules prescribed by the State Government in that behalf from time to time."

5. The said rules came to be amended by Notification dated 27.7.1992. It is further stated that the petitioners have passed the Departmental Examination prescribed by the Government. The petitioners have also requisite experience as required under the rules. However, on account of erroneous interpretation by the authorities of the rules, the petitioners and such other persons who have not passed the said "appropriate professional examination", as the same was not prescribed by the Government, were not considered and were not promoted to the post of Senior Technical Assistant. It is further stated that the petitioners have made various representations to the authorities. However, the same were not considered positively and the petitioners were not given promotion to the post of Senior

Technical Assistant. It is further stated that so far as appropriate professional examination is concerned, as stated in Rule 2(a), no such examination has been prescribed by the Government. However, the authorities in erroneous manner, treated the Diploma of Licentiate (in General Insurance) of Federation of Insurance Institute in India or of the Chartered Insurance Institute of London as “appropriate professional examination” without any basis for the same, though the recruitment rules do not provide for the same. It is further stated that it is no where provided under the rules that the Diploma of Licentiate (in General Insurance) shall be treated as “appropriate professional examination”. No such examination as provided by the recruitment rules is prescribed by the Government so far and, therefore, there is no question of compelling the petitioners and such

other employees to pass such examination. It is, therefore, submitted that the authorities cannot compel the employees like petitioners to pass any other examination at their sweet will.

6. It is also case of the petitioners that authority has not provided the Diploma in Licentiate (in General Insurance) as appropriate professional examination alongwith the Departmental Examination in Rule 2(a) of the Rules. The rule making authority has only provided “appropriate professional and departmental examination, if any, as may be prescribed by the Government”. So far as the Departmental Examination is concerned, it has been prescribed by the Government and the petitioners have passed the same long back. However, no “appropriate professional” examination is prescribed by the Government and hence there is no question of passing such

private examination. It is further submitted that it was not intention of the rule making authority to provide the said Diploma of Licentiate (in General Insurance) as one of the qualifications whereas it has specifically provided the same in case of direct recruitment to the post, in Rule-4(b)(i) that the candidate should have Diploma of Licentiate or a Diploma of Associate (in General Insurance). However, in Rule 2(a) relating to promotion, even after amendment in 1992 “appropriate professional examination, if any, prescribed by the Government” is provided. In this view of the matter, non-promotion of the petitioners on such ground is absolutely illegal, arbitrary and bad.

7.It is further submitted that Rule-6 of the said Rules provides that the selected candidates shall be required to pass the professional or

the departmental examination if any prescribed by the Government. Thus, the intention of the rule making authority is to impose one of the two examinations i.e professional or departmental examination, as may be prescribed by the Government. Rule-6 also does not make the employees to pass the Licentiate Examination. It is only in case of direct recruits in Rule-4 that the said Licentiate Examination is provided, as in that case there is no requirement of experience etc. It is, therefore, submitted that the authorities cannot compel the employees to pass the Licentiate Examination for being eligible for promotion to the post of Senior Technical Assistant. It is also submitted that combined reading of Rule 2(a) and Rule-6 will make it clear that on passing the departmental examination prescribed by the Government, the employees in the cadre of Junior Technical

Assistants would be eligible for promotion, subject to the requirement of experience, proved merit and efficiency etc. It is further submitted that the action on the part of the authorities in compelling the employees – Junior Technical Assistants to pass an examination which is not provided under the rules and which is not prescribed by the Government, and thereby curtailing the benefits of the employees which are, even otherwise, available to them, is absolutely illegal, arbitrary, unconstitutional, violative of Articles 14 and 16 of the Constitution of India.

8. It is further submitted that on account of erroneous and arbitrary interpretation of the recruitment rules by the authorities, the case of the petitioners and such other persons was not considered for promotion as Senior

Technical Assistants, as they have passed the Departmental Examination prescribed by the Government and do not possess the Licentiate Diploma though according to the petitioners they are not required to pass the said examination. It is further submitted that Junior Technical Assistants who only possess the Licentiate Diploma and have not passed at all the Departmental Examination prescribed by the Government, are being promoted as Senior Technical Assistants. Thus, out of the employees of the same cadre, one set of Junior Technical Assistants who possess only Licentiate Diploma and have not passed any Departmental Examination prescribed by the Government, were promoted as Senior Technical Assistants. This is absolutely illegal and bad and contrary to the rules, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India.

9. Mr.L.B.Dabhi, learned Asstt.Govt.Pleader is appearing on behalf of respondents No.1, 2 and 3. An affidavit in reply is filed on behalf of respondents No.1, 2 and 3. Mr.Dabhi has submitted that the persons working as Junior Technical Assistant in the Directorate of Insurance (Gujarat State) and claiming promotions to the post of Senior Technical Assistant are not eligible, as only those persons are eligible who have passed the examination i.e. Licentiate Examination of Insurance Institute of India, as per the Government Notification dated 16.7.1978 concerning to Junior Technical Assistant Departmental Examination Rules, 1978, read with Rule 2(a) of the Senior Technical Assistant Recruitment Rules, 1977, which are framed under the proviso to Article 309 of the Constitution of India. It is further submitted that the

petitioners were fully aware that they have to pass the examination i.e professional examination which was being conducted by Federation of Insurance Institute in India or Chartered Insurance Institute (General Insurance) of London and to obtain the diploma from that Institute or Diploma from Federation of Insurance Institute from India or Diploma from London Chartered Insurance Institute (General Insurance) since beginning and for more than 15 years and they have appeared in the said examination time and again and have failed and/or could not succeed to clear the said examination. It is further submitted that as per Government Notification dated 1.4.1977 for appointment of Junior Technical Assistant Rules are framed under proviso to Article 309 of the Constitution of India. It is further submitted that for the Senior Technical Assistant, as per Rule-6 the persons are

required to pass and clear professional qualifying examination and/or departmental examination whereas there is exemption in case of Junior Technical Assistant if the employee is possessing Diploma in Licentiate or who have passed the higher examination conducted by the Federation, as per Rule 1(3) of Government Notification dated 18.7.1978. He has further submitted that neither the petitioners are possessing the eligibility criteria for falling within the zone of consideration nor they have passed the examination and hence their cases cannot be considered by the respondent authority. He has further submitted that the entire petition is misconceived and no relief can be granted to the petitioners.

10. Mr.Paresh Upadhyay, learned advocate appearing for the respondents No.4 and 5 has also opposed to grant any relief claimed by the

petitioners in this petition. An affidavit in reply is filed by the respondent No.5. He has submitted that for the employees working in the cadre of Junior Technical Assistant, there are two examinations. One departmental examination which is retention examination and secondly, professional examination, namely, Licentiate Diploma of Insurance Institute of India, which is qualifying examination for the purpose of promotion to the post of Senior Technical Assistant. He has also submitted that those who straight way pass the Licentiate examination of Insurance Institute of India, are exempted from passing the departmental examination, however, it is not true otherwise i.e those who pass departmental examination do not automatically become eligible for being considered for promotion to the post of Senior Technical Assistant, unless and until they pass Licentiate examination of Insurance Institute

of India. He has further submitted that the above requirement of passing departmental examination and/or Licentiate examination would be more clear on the basis of the recruitment rules of the cadre of Senior Technical Assistant. For the purpose of direct recruitment on the post of Senior Technical Assistant, a candidate must possess Licentiate Diploma of Insurance Institute of India, and hence it becomes qualifying qualification of the post of Senior Technical Assistant. He has further submitted that the petitioners have appeared in the Licentiate examination for more than once but none of the petitioners have passed the Licentiate examination of Insurance Institute of India and thus they are not eligible to be considered for promotion on the post of Senior Technical Assistant and, therefore, they were rightly not being considered by the authorities for promotion on

the post of Senior Technical Assistant. He has further submitted that to encourage the employees to pass the professional examination like Licentiate Diploma of Insurance Institute of India, incentives are also given by the Government, whereby the persons who pass the said examination at the first trial get a cash awards. He has further submitted that on the basis of passing the said professional examination respondents Nos.4 and 5 were exempted from passing the departmental examination as per rules and necessary entry to that effect was also made in their service book by the authorities. He has further submitted that the petitioners were also aware about the fact that they were required to have Licentiate Diploma of Insurance Institute of India for being considered for promotion to the post of Senior Technical Assistant, as per rules and, therefore, they had represented to the

Government to amend / relax the said requirement in their favour.

11. To make good his submission Mr.Upadhyay has invited attention of the Court to Rules, namely, Junior Technical Assistants Departmental Examination Rules, 1978. Sub Rule-III of Rule-1 makes it clear that they shall apply to persons recruited in the Directorate of Insurance as Junior Technical Assistants. Proviso makes an exception and provided that these rules shall not apply to such persons who have passed the Licentiate or higher examination of Federation of Insurance Institutes in India in General Insurance, or who have attained the age of 45 years on the appointed date. He has further relied on Rule-3 which says that every person who is appointed as a Junior Technical Assistant on or after the appointed date shall be required to pass the

examination in three chances within a period of three years from the date of his appointment or from the appointed date whichever is later. He further submitted that if Rule-1 (3) and Rule-3 are read together, the persons who have passed the Licentiate Examination are exempted from passing the Departmental Examination, whereas the petitioners who have been recruited as Junior Technical Assistant shall have to pass the examination in three chances within the period of 3 years. He has further invited attention of the Court to the Rules called the Junior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977. Rule-4 says that the selected candidates shall be on probation for a period of one year and Rule-5 says that the selected candidate shall be required to pass the professional or departmental examinations, if any, in insurance and an examination in Gujarati or Hindi or both

in accordance with the rules prescribed by the State Government in that behalf from time to time. Rule-5 is for the purpose of retention of the selected candidate in the cadre of Junior Technical Assistant. Since the petitioners have passed the Departmental Examination they are clearly confirmed under the said Rules. Since the respondents No.4 and 5 passed the Licentiate or Higher Examination of Federation of Insurance Institute in India in General Insurance, they have been given exemption from the applicability of the rules for Junior Technical Assistant Departmental Examination Rules, 1978.

12. Coming to the Rules, namely, Junior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977, Mr.Upadhyay has submitted that Rule-2 of the said Rules prescribed two modes of appointment to the post

of Senior Technical Assistant, one by promotion and another by direct selection. Rule-2(a) prescribes eligibility criteria of the candidate to be considered for the post of Senior Technical Assistant. By promotion of a person of proved merit and efficiency from amongst the persons working as Junior Technical Assistant who have put in about 5 years service in the said cadre and who have passed the appropriate professional and Departmental Examination, if any, as may be prescribed by the Government from time to time. So far as respondents No.4 and 5 are concerned, they have already passed the professional examination and exemption has been granted to them from passing the Departmental Examination and hence they have satisfied the condition precedent laid down in Section 2(a) of the said Rules. He has, therefore, submitted that since the present petitioners have not passed the

professional examination as envisaged in Rule 2(a), they were not rightly considered by the authorities. He has further submitted that as per Rule-6 the petitioners are totally unqualified, as the Rule-6 is applicable to the direct recruits and, as per Rule-6, selected candidate means selected to the post of Senior Technical Assistant who shall be required to pass professional or departmental examination, if any. Since the petitioners have not been selected to the post of Senior Technical Assistant and their very entry to the said post has been disputed, they cannot take any advantage of Rule-6. So far as respondents No.4 and 5 are concerned, they have passed the professional examination and since the exemption was granted from passing the departmental examination, they are not required to pass the departmental examination and hence, the petitioners are not entitled to claim any

parity with the respondents Nos.4 and 5 on the ground that since the respondents Nos.4 and 5 have passed only one examination and they have been granted promotion to the post of Senior Technical Assistant, the petitioners have also passed one examination and hence they should also be granted promotion to the post of Senior Technical Assistant.

13. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings contained in the petition, affidavit in reply filed on behalf of the State Government as well as private respondents and after having gone through the three relevant Rules, namely, Junior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977, Junior Technical Assistant Departmental Examination Rules, 1978 and Senior Technical Assistant (in

the Directorate of Insurance) Recruitment Rules, 1977, the Court is of the view that the short question comes up for consideration of the Court is that whether the exemption granted to persons who have cleared Licentiate Examination, from passing the Departmental Examination, can as well be available even for the purpose of considering their promotion to the post of Senior Technical Assistant. As far as the cadre of Junior Technical Assistant is concerned, it is clear that the petitioners as well as respondents No.4 and 5 both have passed either professional or departmental examination. All of them were, therefore, confirmed on the post of Junior Technical Assistants. The question then arise as to what is the requirement for promotion to the post of Senior Technical Assistants. Whether one has to pass both the examination, namely, professional as well as departmental

examination. The professional examination passed by the respondents Nos.4 and 5 was considered sufficient for the purpose of getting promotion to the post of Senior Technical Assistants. They were treated as exempt from passing Departmental Examination. Thus, requirements of Rule-2(a) of Senior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977, are satisfied qua the respondents Nos.4 and 5. Admittedly the present petitioners have passed only the departmental examination, and they have not passed the professional examination. In this view of the matter, it cannot be said that the condition precedents laid down in Section 2(a) of the Rules are satisfied by them. Even the next question arises for Court's consideration is that whether in absence of any clarification with regard to appropriate professional examination, can it be

said that the Licentiate Examination is as good as the appropriate professional examination or any other appropriate professional examination is required to be passed. All these questions are relevant and need consideration on the touch stone of Articles 14 and 16 of the Constitution of India. The Court has to see that whether rules framed are violative of Articles 14 and 16 of the Constitution of India and whether benefits given to the respondents Nos.4 and 5 on the basis of interpretation of rules canvassed before this Court are just and proper. If the arguments canvassed by Mr.Upadhyay are accepted, and exemption given to the respondents Nos.4 and 5 from passing the departmental examination is held good even for the purpose of getting promotion to the post of Senior Technical Assistant, in that case, there is no discrimination or violation of Articles 14 and 16 of the Constitution of India, but if

the said exemption is restricted only to get entry or retain oneself in the cadre of Junior Technical Assistant and if the passing of Licentiate Examination is not one which is envisaged as appropriate professional examination in Rule-2(a) of the Senior Technical Assistant (in the Directorate of Insurance) Recruitment Rules, 1977, in that case the denial of exemption to the present petitioners is not justified.

14. Looking to the facts of the present case, it is an admitted position that the present petitioners have passed the departmental examination and passing of that examination made them eligible for confirmation of post of Junior Technical Assistant. It is also an admitted position that they have cleared the departmental examination in or around 1983. The present petition is filed in the year 1997.

During these long intervening period of 14 years, some of the petitioners have made various attempts to get through the professional examination, still they have not cleared the examination. Thus, the petitioners have also thought it necessary to pass such examination. The grievance was raised only when they failed to pass such professional examination and sought the dispensation of the same. If the promotion to the post of Senior Technical Assistant is on the basis of proved merit and efficiency of Junior Technical Assistant and if the petitioners had not cleared the professional examination, they cannot claim any parity with those persons who have cleared such professional examination. The facts also reveal that the Government has encouraged or granted incentives to the persons who have cleared the professional examination by the first or second trial. It is an

indicative of the fact that what is required for the purpose of promotion from Junior Technical Assistant to Senior Technical Assistant, is proved merit and efficiency and if the professional examination is considered to be more qualitative and meritorious, in that case passing of the departmental examination cannot be insisted upon. The Court is, therefore, not inclined to grant any relief to the petitioners in the present petition as they have not cleared the requisite professional examination. The petitioner's case is not exactly at par or on the same footing as that of the respondents No.4 and 5. As the State Government has framed Rules in such manner that the present controversy arose before the Court. Be that as it may, it is not the function of the Court to direct the State Government to change Rules. However, if there is any ambiguity in the rules, the same should be

removed forthwith. The present petition is accordingly dismissed. Rule is discharged without any order as to costs.

(K. A. PUJ, J.)

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